IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 680 of 2003

with

SPECIAL CIVIL APPLICATION No 1970 & 2035 of 2003

For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR.JN BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HEMANT ALIAS BABBU KEDARNATH MISHRA

Versus

STATE OF GUJARAT

Appearance:

MS KRISHNA U MISHRA, MR HL PATEL, MR SK BUKHARI for Petitioners

MR SUDHANSHU PATEL, MS MITA PANCHAL, AGP for Respondents

CORAM : ACTING CHIEF JUSTICE MR.JN BHATT

Date of decision: 11/06/2003

ORAL JUDGEMENT

#. Age old contest between liberty and detention has once again surfaced in this group of three petitions at the instance of the detenus by invocation of the provisions of Article 226 of the Constitution of India.

#. Liberty is a basic and dynamic jurisprudential concept and philosophy, and therefore, it has constitutional and statutory safeguards for the preservation, projection and protection of the liberty of an individual. Since it is a dynamic aspect and concept, continued research is necessary to regularly assess the changing dimension and dynamics of such a constitutional right, personal right of liberty guaranteed under the Constitution, the highest law of the land.

#. Preventive detention has long standing and deep rooted base in this country. The preventive detention is a serious in-road and encroachment on the liberty of a person. All human beings are born with free and equal rights. All human beings are, no doubt, gifted by their creator with certain unalienable, nontransferable, nonnegotiable natural rights. Justice, liberty and equality have been pursuits of human kind and are sine qua non for organized civilized society. Preservation of human life is the most important right for an individual. The personal liberty has been claimed, and, as such, has been acclaimed as a part of the right to life and for the development and protection of this concept, Courts have taken utmost care to protect various aspects of personal liberty as part of protection of life. Article 21 provides for everyone, right to life, liberty and security of person. Article 21 of the Constitution provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. Article 22(5) also provides requisite and sufficient safeguards while encroaching upon the right to personal liberty of an individual. Under various detention laws, the competent authorities are empowered to pass order of detention, provided material and important constitutional and statutory safeguards are observed, and subjective satisfaction has been reached on an objective assessment of the sufficient material. With this prefatory profile of the preventive detention law, it would be interesting and imperative to assess, evaluate and adjudicate upon the challenge against the detention order in this petition on the basis of the material emerging from the record.

#. The detention orders are questioned on divergent grounds, however, one ground which goes to the root of the matter is common in all the three petitions and therefore, with consent, the petitions are simultaneously dealt with and decided by this common judgment.

#. The detention orders came to be passed by the detaining authority concerned in exercise of powers conferred under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "the PASA Act"), holding that the detenus are "dangerous persons" and "bootleggers" as defined in Section 2(c) and 2(b) of the PASA Act. The main contention which is common is that the cases for theft and bootlegging which are relied upon for passing the orders of detention are purely issues pertaining to maintenance of law and order and by no stretch of imagination, same can be said to be affecting the "public order" or causing disturbance thereof. It must be borne in mind that preventive detention is permissible provided there is disturbance of "public order". It must be successfully shown that there is no any breach of law and order but there is a threat or disturbance of public order. Therefore, it would be necessary to examine and consider whether the impugned action committed of breach of law and order was likely to cause disturbance of public order, and it is always a question of degree and extent of the reach of such act upon the people at large. The main necessity and interest of the detaining authority should be focussed on the infringement or disturbance of the public order and not merely breach of law and order. In this group of three petitions, the detenus are detained under the preventive detention only because they were found committing theft or dealing with prohibited drinks. Ordinarily, such cases of breach of provisions of the Bombay Prohibition Act or Indian Penal Code would be breach of law and order and by no stretch of imagination, it can be said to be causing disturbance of "public order".

#. The question whether a person has committed a breach of law and order or has acted in a manner prejudicial or in a manner likely to cause disturbance of public order is a question of degree and extent of the reach of the act upon the society. The alleged incidents which the detaining authority has referred have arisen under Section 379 of the Indian Penal Code and under the provisions of the Bombay Prohibition Act. In the opinion of the Court, therefore, there is no material on the record of the petitions to show that the alleged

incidents which occurred disturbed even the tempo or normal life of the community and locality and disturbed peace and tranquility or created a sense of alarm and insecurity in the society or locality. No doubt, it is true that solitary incident can also be a basis for passing the detention order. However, it must be successfully established and shown or spelt out from the record that the incidents or instances which are relied upon by the detaining authority are referable and likely to jeopardize the public order and not merely committing breach of provisions of law like law and order. In the opinion of this Court, there is no material worth the name to indicate even remotely that there was any likelihood of any disturbance to the "public order", and therefore, the detention orders impugned in these petitions are required to be quashed and set aside.

#. In the result, all the three petitions succeed and the same are allowed. The questioned detention orders are quashed and set aside. The respondent-authorities are directed to set the detenus at liberty forthwith, if they are not required in any other case. Rule is made absolute. There shall be no order as to costs.

(J.N.Bhatt, Acting C.J.)

(sunil)